***THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

-

-

+WRIT PETITION No.4690 OF 1995

%Dated 20.09.2005

Dr.N.Ram Gopal, S/o N.Ramana, R/o H.No.6/773, Sankarapuram, Cuddapah.

…**PETITIONER**

VERSUS

$ 1. The Executive Officer, Tirumala Tirupati Devasthanam, Tirupathi. And two others.

…RESPONDENTS

!Counsel for Petitioner: MR.P.Rajendra Reddy, Counsel for the Petitioner

^Counsel for the Respondents: MR.S.Srinivas, Standing Counsel for the Respondents

<GIST:

> HEAD NOTE:

? Cases referred

-

AIR 1991 SUPREME COURT 2113

[2] AIR 1995 ANDHRA PRADESH 86

[3] AIR 1970 SC 1150

[4] AIR 1967 SC 884.

[5] AIR 1981 SC 53

[6] (2004) 5 SCC 263

[7] AIR 1979 (SC) 193

[8] AIR 1995 (AP) 86 (FB)

[9] 1988(2) ALT 227

[10] (2002) 5 ALT 454

[11] AIR 1991 (SC) 2113

[12] 2002(1) ALD 4(FB

[13] AIR 1967 (SC) 884

[14] AIR 1981 (SC) 53

[15] 2004 (5) SCC 263

[16] AIR 2002 SC 77

[17] (2001) 8 SCC 416

[18] AIR 1970 SC 422

[19] AIR 1993 SC 1365

20 2003 (4) ALD 96

-

-

-

-

-

-

-

-

-

-

-

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No.4690 OF 1995

Date: 20.09.2005

Between:

Dr.N.Rama Gopal, S/o N.Ramana R/o H.No.6/773, Sankarapuram, Cuddapah.

… Petitioner

and

1. The Executive Officer, Tirumala Tirupati Devasthanam, Tirupathi. And two others.

… Respondents.

–

–

–

–

–

–

–

–

–

–

–

–

–

–

–

–

–

–

–

–

–

–

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

–

W.P.No.4690 OF 1995

ORDER:

Appointment of the 3rd respondent, as Assistant Professor of Indian Medicine in S.V.Ayurvedic College, Tirumala Tirupati Devasthanam, (for short 'T.T.D.'), vide proceedings dated 18-06-1994, is questioned in this writ petition as being contrary to the provisions of the A.P.Public Employment Organisation of Local Cadres and Regulation of Direct Recruitment Order, 1975, notified in G.O.Ms.No.674, dated 20-10-1975.

The facts, to the extent necessary for this writ petition, are that the 2nd respondent issued an advertisement on 14-09-1993 inviting applications for two posts of Assistant Professors in S.V.Ayurveda College and Hospital run by the T.T.D. One of these two posts was reserved for the Scheduled Tribes. Three candidates were called for interview on 22-01-1994, viz., the petitioner, the third respondent and one Dr.N.Chanda. While the petitioner was the only Scheduled Tribe candidate from Zone-IV, (comprising of Chittoor, Ananthapur, Cuddapah and Kurnool Districts), the other two candidates were from the Telangana area, outside the local area of the T.T.D. The 3rd respondent was selected on the basis of merit and appointed as Asst. Professor vide proceedings of the 1st respondent dated 18.06.1994.

A counter affidavit is filed by the 1st respondent, wherein it is stated that the post of Assistant Professor, under Scheduled Tribe category, was not reserved for candidates from the local area, that the third respondent belongs to Telangana area, that he is an in-service candidate, that he was appointed as a Medical Officer in S.V.Ayurveda College, Tirupati, during the year 1989 and that for all purposes, he was treated as a local candidate since he had been residing at Tirupati for the past six years. It is stated that the third respondent was selected on the basis of his merit and not on the basis of his being a local candidate, that the zonal system is not

followed in T.T.D. for appointment in various cadres including medical posts in S.V.Ayurveda College, Tirupati, that a list of candidates was obtained from the Regional Employment Exchange, Hyderabad and that interviews were conducted from amongst those candidates whose names were sponsored by the Regional Employment Exchange. It is further stated that in recruitments to teaching and medical posts,in S.V.Ayurveda College at Tirupati, during the
years 1984, 1987 and 1989, applications were invited from all eligible candidates without restricting it only to local candidates. Candidates from several regions in the State were selected and appointed, more particularly in the backlog reserved vacancies of Medical Officers in S.V.Ayurveda College, Tirupati, which were filled up during the year 1989. It is also stated though the petitioner possessed the requisite educational qualifications prescribed for the post, he did not come up higher in merit and was therefore not selected, that the post of Assistant Professor in Indian System of Medicine is higher than the post of Civil Assistant Surgeon, these two posts are not inter transferable, and that selection of the third respondent was approved by the Selection Committee, the Commissioner, Indian Medicines and Homeopathy, Hyderabad, and the Vice-Chancellor, University of Health Sciences.

The petitioner a resident of Cuddapah District, contends that since T.T.D. is in zone-IV, it is he and not the 3rd respondent who is from the Telangana Area, who should have been appointed in the sole vacancy, reserved for Scheduled Tribe candidates, in the posts of Assistant Professor in Indian Medicine, S.V.Ayurveda College, Tirupati.

The questions, which therefore arise for consideration in this writ petition, are (1) whether the Presidential Order would apply to posts in the T.T.D?; (2) whether posts in the T.T.D. are posts in a civil service or civil posts under the State or posts under a local authority within the State of A.P.? and (3) Whether the State Government, in exercise of its rule making power, under the A.P.Charitable and Hindu Religious Institutions and Endowments Act, has extended the provisions of the Presidential order to posts in the T.T.D?

Questions 1 & 2:

Sri P.Rajender Reddy, Learned counsel for the petitioner, would submit that S.V.Ayurveda College, Tirupati, is affiliated to the S.V. University, is under the supervision and control of the T.T.D. and as such is governed by the provisions of the Presidential Order. Learned Counsel would refer to the third schedule, to the "A.P.Public Employment Organisation of Local Cadres and Regulation of Direct Recruitment Order" (hereinafter referred to as the "Presidential Order"), which specifies the categories of posts, required to be organized into local cadres, for reservation in favour of local candidates, and to Rule 8 (5) of the Presidential Order, whereunder 60% of posts under the State Government belonging to the category of Civil Assistant Surgeons, to be filled by direct recruitment, are to be reserved in favour of and allocated among local candidates. Learned counsel would place reliance on the judgment of the Supreme Court in **GOVT OF A.P. v. A.SURYANARAYANA RAO ,** wherein it was held that Article 371-D is of exceptional nature and its object is to provide equal opportunities in the backward areas in respect of the specified posts mentioned in the Third Schedule which are included in the local cadre which thus become zonal posts. Learned counsel would submit that, keeping in mind the beneficial provisions of the Presidential Order, made under Article 371-D of the Constitution of India, local area reservation is required to be provided for posts upto the cadre of Civil Assistant Surgeon in the T.T.D. also and since the post of Assistant Professor in the 2nd respondent college is interchangeable and equivalent to that of an Assistant Civil Surgeon, the said post is also required to be reserved, in favour of local candidates, in accordance with the provisions of the Presidential Order. Reliance is placed on a Full Bench Judgment of this Court in **B.SUDHAKAR v UNION OF INDIA ,** to contend that the single post of Assistant Professor, reserved for the Scheduled Tribes, should also be reserved in favour of local candidates and since the petitioner is the only Scheduled Tribe local candidate to have applied for the post, it is he and not the third respondent who

should have been appointed.

Sri S.Srinivas, learned counsel appearing on behalf of the T.T.D., would submit that the T.T.D. is not a "local authority", under paragraph 2 of the Presidential Order, as it is not subject to the control of the State Government. Reliance is placed on the Judgment of the Supreme Court in **S.L.AGARWAL v. THE GENERAL MANAGER, HINDUSTAN STEEL LIMITED** in this regard. Learned counsel would submit that the writ petition as filed is misconceived, inasmuch as (1) Posts in the T.T.D. are not civil posts; (2) T.T.D. is a separate legal entity over which the State Government has no financial control; (3) posts in the T.T.D. are not "Civil posts", and the Presidential Order has therefore no application; (4) the post of Assistant Professor in Indian Medicine is higher than the post of Civil Assistant Surgeon, (while the scale of pay of Assistant Professor in Indian Medicine, under revised pay scales, is Rs.3880-8140, the scale of pay of Civil Assistant Surgeon in Allopathy is Rs.3640-7580), and (5) para 8(v) of the Presidential Order, which applies only to the post of Civil Assistant Surgeons, would have no application to the higher post of Assistant Professor in Indian Medicine.

Learned counsel would submit that it is only for civil posts, under the State, that the State Government is obligated to organize local cadres and, since posts in the T.T.D. are not "Civil Posts" under the State, the provisions of the Presidential Order have no application. Reliance is placed on **THE STATE OF ASSAM v. KANAK CHANDHRA DUTTA , MATHURADAS MOHANLAL KEDIA v. S.D.MUNSHAW and Dr.GURJEEWAN GAREWAL v. Dr.SUMITRA DASH** in this regard.

ARTICLE 371-D OF THE CONSTITUTION OF INDIA – ITS BACK GROUND:

Before dealing with the aforementioned questions, it would be useful to refer, in brief, to the historical background in which Article 371D came to be inserted in the Constitution and the Presidential Order came to be made. In 1919, the Nizam of Hyderabad issued a Firman promulgating what came to be known as Mulki Rules. The Nizam confirmed these Rules by another Farman issued in 1949. Those Rules provided interalia 15 years' residence in the State as an essential qualification for public employment. In 1955, the Rajprmukh, in exercise of his powers under the proviso to Article 309 of the Constitution of India, framed the Hyderabad General Recruitment Rules, 1955 in supersession of all previous rules on the subject. One of these Rules laid down that a domicile certificate would be necessary for appointment to the State or subordinate service and the issue of such certificate depended upon residence in the State for a period of not less than 15 years. On November, 1, 1956, as a result of the coming into force of the States Reorganization Act, the State of Hyderabad was trifurcated. Telangana region became a part of the newly formed State of Andhra Pradesh while Marathwada and Karnataka regions ultimately became parts of Maharashtra and Karnataka. At the time of formation of Andhra Pradesh, certain safeguards were envisaged for the Telangana area in the matter of development, employment opportunities and educational facilities. Various steps taken and the safeguards provided to give effect to the assurances did not yield the desired results and, on the contrary, gave cause for dissatisfaction sometimes in the Telangana area and sometimes in the other areas of the State, which led to public agitations and disruption of normal life. A concerted effort was made by several leaders to analyse the factors, giving rise to dissatisfaction, and as a result thereof, a formula was evolved to achieve fuller emotional integration of the people of Andhra Pradesh, for promoting accelerated development of the backward areas of the State and for providing equitable opportunities to different areas of the State in the matter of education, employment and career prospects in public services. This formula, commonly known as the six point formula, was given effect to

by a Bill introduced in Parliament for enacting the Constitution (32nd Amendment) Act, 1972, whereby Article 371D and 371E were inserted in part XXI of the Constitution of India. (**Chief Justice of A.P. Vs. L.V.A.Dikshitulu; Dr. B.Sudhakar Vs. Union of India**; **Dr.Fazal Ghafoor Vs. Principal, Osmania Medical College)**.

The statement, objects and reasons for the Constitution (Thirty-second Amendment) Act, 1973, whereby Article 371-D was introduced in the Constitution of India, reads as under:

"When the State of Andhra Pradesh was formed in 1956, certain safeguards were envisaged for the Telengana area in the matter of development and also in the matter of employment opportunities and educational facilities for the residents of that area. The provisions of clause (1) of Article 371 of the Constitution were intended to give effect to certain features of these safeguards. The Public Employment (Requirement as to Residence) Act, 1957, was enacted inter alia to provide for employment opportunities for residents of Telengana area. But in 1969 (in the case, A.V.S. Narasimha Rao v. State of Andhra Pradesh, (1970) 1 SCR 115 : (AIR 1970 SC 422), the Supreme Court held the relevant provision of the Act to be unconstitutional in so far as it related to the safeguards envisaged for the Telengana area. Owing to a variety of causes, the working of the safeguards gave rise to a certain amount of dissatisfaction sometimes in the Telengana area and sometimes in the other areas of the State. Measures were devised from time to time to resolve the problems. Recently several leaders of Andhra Pradesh made a concerted effort to analyse the factors which have been giving rise to the dissatisfaction and find enduring answers to the problems with a view to achieving fuller emotional integration of the people of Andhra Pradesh. On the 21st September 1973, they suggested certain measures (generally known as the Six Point Formula) indicating a uniform approach for promoting accelerated development of the backword areas of the State so as to secure the balanced development of the State as a whole and for providing equitable opportunities to different areas of the State in the matter of education, employment and career prospects in public services. This formula has received wide support in Andhra Pradesh and has been endorsed by the State Government.

2. This Bill has been brought forward to provide the necessary constitutional authority for giving effect to the Six-Point Formula in so far as it relates to the provision of equitable opportunities for people of different areas of the State in the matter of admission to educational institutions, and public employment and constitution of an Administrative Tribunal with jurisdiction to deal with certain disputes and grievances relating to public services. The Bill also seeks to empower Parliament to legislate for establishing a Central University in the State and contains provisions of an incidental and consequential nature

including the provision for the validation of certain appointments made in the past. As the Six-Point Formula provides for the discontinuance of the Regional Committee constituted under clause (1) of Article 371 of the Constitution, the Bill also provides for the repeal of that clause."

ARTICLE 371-D OF THE CONSTITUTION OF INDIA:

Clauses (1) and (2) of Article 371-D of the Constitution of India read as under:

"371D. Special provisions with respect to the State of Andhra Pradesh – (1) The President may by order made with respect to the State of Andhra Pradesh provide, having regard to the requirements of the State as a whole, for equitable opportunities and facilities for the people belonging to different parts of the State, in the matter of public employment and in the matter of education, and different provisions may be made for various parts of the State.

(2) An order made under clause(1) may, in particular,-

a. require the State Government to organize any class or classes of posts in a civil service of, or any class or classes of civil posts under, the State into different local cadres for different parts of the State and allot in accordance with such principles and procedure as may be specified in the order the persons holding such posts to the local cadres so organized;

b. specify any part or parts of the State which shall be regarded as the local area –

(i) for different recruitment to posts in any local cadre (whether organized in pursuance of an order under this article or constituted otherwise) under the State Government;

(ii) for different recruitment to posts in any cadre under any local authority within the State; and

(iii) for the purposes of admission to any University within the State or to any other educational institution which is subject to the control of the State Government;

c. specify the extent to which, the manner in which and the conditions subject to which, preference of reservation shall be given or made –

(i) in the matter of direct recruitment to posts in any such cadre refereed to in sub-clause (b) as may be specified in this behalf in the order;

(ii) in the matter of admission to any such University or

other educational institution referred to in sub-clause (b) as

may be specified in this behalf in the order,

to or in favour of candidates who have resided or studied for any period specified in the order in the local area in respect of such cadre, University or other educational institution, as the case may be.

Article 371-D of the Constitution of India is intended to provide for equitable opportunities and facilities for the people belonging to different parts of the State. It aims at maintaining the integrity of the State and to dispel any feeling of one region dominating the other. While interpreting the Presidential Order, the philosophy behind Article 371-D of the Constitution of India cannot be lost sight of. (**M.Shyam Sunder Vs. Govt. of A.P.**). The primary purpose of incorporating Article 371-D was (i) to promote accelerated development of the backward areas of the State of Andhra Pradesh so as to secure the balanced development of the State as a whole and (ii) to provide equitable opportunities to different areas of the State in the matter of education, employment and career in public service. (**L.V.A.Dikshitulu** 7 supra). Article 371-D of the Constitution of India is a special provision, for the State of Andhra Pradesh, which makes a departure from the general scheme of the Constitution of India. (**Govt. of A.P. Vs.A.Suryanarayana Rao**). Article 371-D(1) is in general terms and applies to public employment as a whole. Article 371-D(2) which, in particular, applies to direct recruitment, is only complementary to clause (1) and particularizes the matters to which an order made under clause (1) provides for. (**A.Suryanarayana** 11 supra).

THE PRESIDENTIAL ORDER:

After insertion of Article 371-D of the Constitution, by the Constitution (Thirty-second Amendment) Act, 1973, the President of India, issued the Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975 (hereinafter referred to as "the Presidential Order"). The Presidential Order was intended to provide for equitable opportunities and facilities for the people belonging to different parts of the State of Andhra Pradesh, in the matter of public employment. Para 3 of the Presidential Order casts an obligation on the State Government to organise classes of posts in the civil services and the classes of civil posts under the State, into different local cadres for different parts of the State to the extent and in the manner provided in the Presidential Order. The enabling provision for organisation of different local cadres is intended to achieve the main objective of Article 371-D, namely, to provide equitable opportunities to different areas of the State, in the matter of employment and career prospects in public services as well as to promote accelerated development of the backward areas of the State of Andhra Pradesh, so as to secure the balanced development of the State as a whole.

"Local area", "Local authority", "Local cadres", "State Government" and "Zone" are defined in paragraphs 2(c), (d), (e),(k) and (m) of the Presidential Order to mean:-

"c) Local Area' in relation to any local cadre, means the local area specified in paragraph 6 for direct recruitment to posts in such local cadre, and includes, in respect of posts belonging to the category of Civil Assistant Surgeons the local areas specified in sub.paragraph (5) of paragraph 8 of this order.

d) Local Authority' does not include any local authority which is not subject to the control of the State Government;

e) Local cadre means any local cadre of posts under the State Government organized in pursuance of paragraph.3 or constituted otherwise for any part of the State."

k) "State Government" means the Government of Andhra Pradesh

m) "zone" means the zone specified in the second Schedule comprising the territories mentioned therein.

Paragraph 3 relates to organization of local cadres, paragraph 4 to allotment of

persons, paragraph 5 to local cadres and transfer of persons, Paragraph 6 to local areas, Para 7 to local candidates and qualifications for recruitment to the post as a local candidate, and Paragraph 8 to reservation in the matter of direct recruitment. Paragraph 8(v) reads thus:

"60% of the posts under the State Government belonging to the category of Civil Assistant Surgeons to be filled by direct recruitment at any time shall be reserved in favour of and allocated amongst the local candidates in relation to the local area specified in Column (1) of the Table below in the respective ratios specified in the corresponding entry in column (2) thereof."

ZONE	LOCAL AREA	RATIO
I	Districts of Srikakulam and Visakhapatnam	13
II	Districts of East Godavari and West Godavari and Krishna	18
III	Districts of Guntur, Prakasam and Nellore	15
IV	Districts of Chittoor, Cuddapah, Anantapur and Kurnool	18
V	Districts of Adilabad, Karimnaar, Waranal and Khammam	15
VI	Districts of Hyderabad (Excluding the City of Hyderabad), Nizamabad, Mahaboobnaar, Medak and Nalgonda	17
VII	City of Hyderabad	4

Paragraph 8(vi) provides that while determining under paragraph 8, the number of posts to be reserved in favour of local candidates any fraction of a post shall be counted as one.

Paragraphs 10 and 11 of the Presidential Order read thus:

"10. POWER TO AUTHORIZE ISSUE OF DIRECTIONS: 1) The president may, by order, require the State Government to issue such directions as may be necessary or expedient for the purpose of giving effect to this order to any local authority and such local authority shall comply with such directions.

2) The state Government may, for the purpose of issuing any direction under sub paragraph (1) or for satisfying itself that any directions issued under sub paragraph (1) have been complied with, require, by order in writing any local authority to furnish them such information, report or particulars as may be specified, in the order and such local authority shall comply with such order.

11.ORDER TO HAVE OVER RIDING EFFECT: The provisions of this order shall have effect notwithstanding anything contained in any statute, ordinance, rule regulation or other order made before or after the commencement of this order in respect of direct recruitment to posts under the state Government or any local authority."

Among the zones specified in the second Schedule is zone (iv) comprising Chittoor, Cuddapah, Anantapur and Kurnool District. Since both Tirumala and Tirupati are in Chittoor District, it is contended that the posts in TTD, located within Chittoor District, falls within zone (iv) and posts in the T.T.D. are, therefore, required to be reserved for candidates from zone (iv) alone and not made available to those who do not fall within the zone.

On an analysis of the provisions of the Presidential Order, it is clear that having regard to historical compulsions which have led to the insertion of Art. 371D, the Presidential Order provides the framework for intra State compartmentalization of certain posts under the rubric of local cadres, constituted for parts of the State and protects the service conditions of members allotted or recruited to such local cadres. Local cadres are thus the result of historical compulsions engendered by economic and other differentia, operating between parts of the State of Andhra Pradesh, and of the felt grievances of residents of such parts of the State. It is well to remember the historical compulsions which have led to the enactment of the Presidential Order, which is buttressed by the overriding effect given to the provisions of the Presidential

Order not only against the exercise of majoritarian political and executive choices of the State, but is also made operative against all other provisions of the Constitution of India (Article 371-D (10) read with para 11 of the Presidential Order) (**G.Anantha Reddy Vs. Andhra Pradesh Admn. Tribunal, Hyderabad).** The provisions of Article 371-D and the Presidential Order are insulated from any attack or challenge based on any other provision of the Constitution or any other law for the time being in force. It is also not open to challenge on the ground of violation of Article 14 of the Constitution. (**Dr.B.Sudhakar** 8 supra)**; (Dr.Fazal Ghafoor** 9 supra**).**

POSTS IN CIVIL SERVICE-CIVIL. POSTS UNDER THE STATE:

The power, to make special provisions with respect to the State of Andhra Pradesh, under Article 371-D of the Constitution of India, is conferred exclusively on the President and, that too, to posts under the control of the State Government or under any local authority within the State.

There is no formal definition of "post" and "civil post" in the Constitution of India. The sense in which they are used in the Services Chapter of Part XIV of the Constitution is indicated by their context and setting. A civil post is distinguished in Art. 310 from a post connected with defence. It is a post on the civil as distinguished from the defence side of the administration, an employment in a civil capacity under the Union or a State. In Art. 311, a member of a civil service of the Union or all-India service or a civil service of a State is mentioned separately. A civil post would, therefore, mean a post not connected with defence or one not outside the regular civil services. A post is a service or employment. A person holding a post under a State is a person serving or employed under the State. The heading and the sub-heading of Part XIV and Chapter I emphasise the element of service. There is a relationship of master and servant between the State and a person said to be holding a post under it. The existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances and it is a question of fact in each case whether there is

such a relation between the State and the holder of a post. A person who holds a civil post under a State holds "office" during the pleasure of the Governor of the State, except as expressly provided by the Constitution. A post under the State is an office or a position to which duties, in connection with the affairs of the State, are attached, an office or a position to which a person is appointed and which may exist apart from and independent of the holder of the post. A post under the State means a post under the administrative control of the State. The State may create or abolish the post and may regulate the conditions of service of persons appointed to the post. **(State of Assam v. Kanak Chandra Dutta: Mathura Das Kedia V. S.D.munshan**).

I n **L.V.A.Dikshitulu's case (**7 supra**)**, the question which arose for consideration was whether the phrase "posts in the civil service of the State", occurring in Article 371-D of the Constitution, covered posts held by the High Court staff and persons belonging to the subordinate judiciary. The Apex Court, while taking note of the fact that the phrase "civil service of the state" was a amorphous expression not defined anywhere in the Constitution, held that as the language of the phraseology employed was imprecise, in order to ascertain the true meaning of the term and phrase employed, it was legitimate for the Court to go beyond the literal confines of the provision and to call in aid rules of construction, such as legislative history, the basic scheme and framework of the statute as a whole, the object sought to be achieved, the consequences that may flow from the adoption of one in preference to the other possible interpretation etc., The Apex Court further held that where two alternative constructions are possible, the Court must choose the one which will accord with the other parts of the statute and ensure its smooth, harmonious working and eschew the other which leads to absurdity, confusion, friction, contradiction and conflict between its various provisions or undermines or tends to defeat or destroy the basic scheme and purpose of the enactment. The Supreme Court further held that the evil which was sought to be remedied by insertion of Article 371-D had no casual nexus to the independence of the High Court and subordinate judiciary under Articles 229 and 235 of the Constitution of

India and that, while ascertaining the true intention of Parliament, the wide literal interpretation had to be eschewed and the alternative interpretation, according to which members of the High Court staff and the subordinate judiciary would not fall within the purview of the phrase “civil services of the state”, accepted, as such a restricted construction would ensure the smooth working of the Constitution and harmony amongst its various provisions. The Supreme Court observed thus:

“It is true that this very phrase in the context of the provision in Article 311 includes the employees of the High Court and members of the judicial services. But it must be remembered that the provisions of Article 311 are of a general nature. They give constitutional recognition to a fundamental principle of natural justice, by making its protection available uniformly to all Government servants. That is, why in the context of that Article this phrase has been spaciously construed. As against this, Article 371-D is a special provision which marks a departure from the general scheme of the Constitution. The area of the departure cannot be extended beyond what is unmistakably and specifically delineated by the words employed therein. A phrase used in the context of a general provision may not carry the same meaning when employed in the context of a special provision, particularly when that phrase has nowhere been defined in the enactment. "Words used with reference to one set of circumstances", said Lord Blackburn in Edinburgh Street Tramways Co. v. V. Torbain (1877) 3 AC 58 at p.68, "may convey an intention quite different from what the self same set of words used in reference to another set of circumstances would or might have produced". This holds true even when the same words are used in different contexts in the same enactment. Therefore, in a special provision like Article 371-D as its heading itself proclaims - which derogates from the general scheme of the Constitution for a specific purpose, general undefined phrases are not to be interpreted in their widest amplitude but strictly attuned to the context and purpose of the provisions. Conversely, had it been the intention of Parliament to include 'Officers and servants of the High Court' and members of the 'judicial service of the State' and of the cadre of 'District Judges', in the phrase 'civil services of the State' occurring in Clause (3) of Article 371-D, and thereby depart from the basic scheme of Chapters IV and VI, Part VI, the language commonly employed in sub-clauses should have read like this:-

> "Class or classes of posts in the civil services of the State including posts in the "judicial service of the State", and of "District Judges" in the State; class or classes of posts of "officers and servants of the High Court"....."

Since Article 371D is a special provision which marks a departure from the general scheme of the constitution, the area of departure cannot extend beyond what is unmistakable and specifically delineated by the words employed therein and since,

under Article 371-D (1) and (2), the provision which may be made, in matters of public employment, is in relation to “posts in civil service” and any “class or classes of civil posts and any “cadre under any local authority”, the expressions “posts in civil services under the state”, “class or classes of civil posts” and “cadres under any local authority” are not to be interpreted in their widest amplitude but strictly attuned to the context and purpose of the provisions of Article 371-D of the Constitution of India.

ARE POSTS IN THE T.T.D, CIVIL POSTS UNDER THE STATE

To decide the question as to whether posts in the T.T.D are civil posts under the state or posts in a civil service to which the Presidential order is applicable, the provisions of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (hereinafter referred to as the “Act”) and the rules made thereunder are required to be examined.

Section 2(28) of the Act defines “Tirumala Tirupathi Devasthanams” to mean the temples specified in the First Schedule and the endowments and properties thereof and to include educational institutions and other institutions specified in the Second Schedule and that the endowments and properties thereof and the Tirumala Tirupati Devasthanams (T.T.D) shall be deemed to be constituted into a single religious institution for the purposes of the Act. Chapter XIV of the Act relates exclusively to the T.T.D. Section 96 therein relates to the constitution of the Board of Trustees and Section 97 to the powers and functions of the Board. Section 97-A relates to constitution of Committees and under Clause (1) thereof, there shall be a Committee constituted by the Government for the T.T.D. called the “Tirumala Tirupathi Devasthanams Management Committee”. It shall be a body corporate, having perpetual succession and a common seal, with power to acquire, hold and dispose of property and to sue and be sued by the said corporate name. Section 97B prescribes the powers and functions of the Committee, and under Clause (i) thereof the administration of the T.T.D. shall vest in the Committee and the Committee shall, for this purpose, in addition to the powers conferred and functions entrusted to it by the Act, exercise such powers and perform such functions as may be prescribed. Under Clause (ii) the Committee has been empowered to manage the properties and affairs of the T.T.D. and under Clause (v), the Committee has

been given the powers to exercise general superintendence and control over the administration of the T.T.D. in conformity with the policy laid down by the Board. Section 111 relates to the funds of the T.T.D. and under sub-section (1) thereof, the T.T.D. shall have its own funds, the corpus of which shall include all the amounts received by it by way of donations, gifts, kanukas including offerings deposited in Hundis and any income from any other source and all payments by T.T.D. are required to be made from the said funds. Under Section 111(4), the funds of T.T.D. may be utilized for all or any of the purposes prescribed thereunder and for any other purpose permitted by any other provisions of the Act. Such purposes include, under Section 111(4)(ii), the maintenance, management and administration of educational institutions of the Tirumala Tirupathi Devasthanams. Under Section 128, the Committee shall be entitled to take and to be in possession of all the institutions of the T.T.D.

The Tirumala Tirupathi Devasthanams Employees Service Rules, 1989 notified under G.O.Ms.No.1060, Revenue (Endowments-I) dated 24-10-1989, (hereinafter referred to as the 1989 rules) apply to every employee, of the Tirumala Tirupathi Devasthanams, except to the Officers or Staff taken on contract basis and officers or staff taken on deputation from the Government or other organizations. While Rule 4 provides that employees of the Tirumala Tirupathi Devasthanams shall be governed by the rules, orders and clarifications issued by the Government of Andhra Pradesh in respect of employees of the State Government, in so far as they are not inconsistent with the Act and the Rules made thereunder, Rule 5(i) provides that the Executive Officer shall be the appointing authority in respect of all posts except the posts for which the Government is the appointing authority. Rule –9 relates to appointment and method of recruitment and under sub-rule (i) the method of recruitment for appointment, qualifications and the age prescribed for various posts shall be as specified against each post in Annexure-II to the Rules, provided that in case of teaching staff of Education Institutions affiliated to any University or any Government, the rules of such University or such Government as the case may be, in respect of qualification, age, method of recruitment, pay and allowances,

vacation, leave salary , traveling allowance and age of retirement shall apply. Rule 10 relates to fixation of strength of the establishment and Rule 12 to superannuation.

On a reading of Section 97-A(1) of the Act, which provides that the T.T.D. Management Committee shall be a "body corporate" having perpetual succession and a common seal with power to acquire, hold and dispose of property and to sue and be sued in its corporate name, it is clear that the T.T.D. is a separate entity in itself. Employees of, a "body corporate", a legal entity separate from the State, cannot claim to be holders of civil posts under the State. There is also no master and servant relationship between the State and an employee of the T.T.D. The Act does provide for a certain degree of supervision by the Government over the institution of the T.T.D. but this does not lead to the conclusion either that the T.T.D. is under the control of the Government or that employees of the T.T.D. are employees of the Government entitled for the protection of Article 311. As the employees of T.T.D. cannot avail the protection of Article 311 and since the same can be claimed only by members of a civil service of the Union or of all-India service or of a civil service of a State or by persons who hold a civil post under the Union or a State, neither can T.T.D. be treated as a "State" for the purpose of Article 311 nor its employees as holding any "civil post". (***DR. Gurjeewan Garewal v. DR. Sumitra Dash,***).

Since Article 371-D is a special provision which marks a departure from the general scheme of the Constitution, the area of departure cannot be extended beyond what is un-mistakably and specially delineated by the words employed therein and since Article 371-D is a special provision applicable to posts in the civil service, to civil posts under the Government ofAndhra Pradesh and to posts under a local authority within the State of Andhra Pradesh, the provisions of the Presidential Order cannot be extended to employees of TTD. (**L.V.A.Dikshitulu** 7 supra)

ARE POSTS IN THE T.T.D POSTS UNDER A"LOCAL AUTHORITY"

The next question which arises for consideration is whether posts in the T.T.D. can be said to be posts under a "Local Authority". Entry 5 of List II, of the Seventh Schedule to the Constitution, specifically refers to municipal Corporations and other local authorities established for the purpose of local self-Government or

village administration as part of local Government. Local authorities are also included in the expression 'State' in Article 12 of the Constitution of India. Local authorities exercise many governmental functions which State Governments are empowered to perform, and are entrusted with the power to levy taxes and to exercise large number of powers loosely called "police powers" regulating several aspects of human life. Articles 276 and 277 of the Constitution takes note of the powers of local authorities to levy certain taxes. (**Mathuradas Mohanlal Kedia** 5 supra). It is no doubt true that Section 114(1) of the Act empowers the Government to notify the limits of Tirumala Hills Area for the purpose of civil administration and, under clause (a) of sub-section (2) thereof, to declare that the provisions of the Panchayat Raj Act shall be extended to Tirumala Hills area. It is also true that under Section 114(2) (b)(i) of the Act, Tirumala Hills Area shall be deemed to be a gram panchayat and under Section 114(2)(b)(ii), all references to a Gram Panchayat, Sarpanch, Executive Officer, Executive authority shall be construed as references to the Executive Officer in the said Tirumala Hills Area. It is however well to remember that, under Section 2(28) read with the First Schedule of the Act, the T.T.D. includes not only the Temple of Sri Venkateswara Swamy on Tirumala Hills but Temples and endowments in and around Tirupati, in other parts of Chittoor District as also in Rishikesh. Employees of T.T.D work at all these places. Under Section 109 of the Act, the Executive Officer of the T.T.D. has been conferred the general powers to carry out the provisions of the Act and to be responsible for the proper maintenance and custody of properties of the T.T.D. His function, as Executive Officer of the Gram Panchayat of Tirumala Hills, is but a small fraction of his functions as Executive Officer of the T.T.D. Further Para 2 (d) of the Presidential order defines “local authority” as not to include any local authority which is not subject to the control of the State Government. As held supra, though the State Government does exercise a degree of supervision, it cannot be said that the T.T.D. is subject to the control of the State Government. It is therefore clear that

neither would the T.T.D. be a 'local authority' nor can the posts in T.T.D. be equated to posts under a 'local authority' . Posts in the T.T.D are neither posts under the State Government nor under any local authority within the State of Andhra Pradesh, and the provisions of Article 371-D of the Constitution of India would therefore, not apply to posts in the T.T.D.

Question No.3:-

Sri P.Rajender Reddy, Learned counsel for the petitioner, places reliance on G.O.Ms.No.925, Revenue (ENDT.III) Department, dated 18-06-1983 whereunder 'The Tirumala Tirupathi Devasthanams Servants other than Hereditary Office holders (conditions of Service) Rules, 1983, (for short '1983 T.T.D. Rules), were notified. Rule 3, of the 1983 T.T.D. rules, provides that the servants of T.T.D., other than hereditary office holders, shall be governed by the rules, orders and clarifications issued by the Government of Andhra Pradesh, in respect of employees of the State Government, insofar as they are not inconsistent with the Act and the rules made thereunder. Learned counsel would submit that since Rule 3(9) of the 1983 T.T.D. Rules itself provides that the rules, applicable to Government servants, shall be applicable to employees of the T.T.D., the Presidential Order would fall within the ambit of Sub-Rule (9) of Rule 3 and would also apply to recruitments made to posts in the T.T.D. Learned counsel would refer to the Tirumala Tirupathi Devasthanams Employees Service Rules, 1989 (for short 'the 1989 Rules'), notified in G.O.Ms.No.1060, Revenue (Endowments-I), dated 24.10.1989, more particularly Rule 9, which relates to appointment and method of recruitment. Proviso to Rule 9(i) stipulates that, in case of teaching staff of Educational Institutions affiliated to any University or any Government, the rules of such University or such Government, as the case may be, in respect of qualifications, age, method of recruitment, pay and allowances, vacation, leave salary, traveling allowance and age of recruitment shall

apply. Learned counsel would submit that since S.V. Ayurveda College is an Educational Institution, affiliated to the Sri Venkateshwara University and since the post of Assistant Professor is a teaching post in an Educational Institution, in view of the proviso to Rule 9(i), the rules applicable to Government employees would automatically apply, which rules, according to the learned counsel, would include the Presidential Order. Learned counsel would submit that since the T.T.D has adopted the Rules, applicable to Government employees, by necessary implication, the Presidential Order would also be deemed to apply in cases of recruitment made to posts in the T.T.D including that of Assistant Professor in Indian Medicine in S.V. Ayurveda College, Tirupati.

Sri S.Srinivas, Learned counsel appearing on behalf of the T.T.D., would submit that the power to specifically provide for equitable opportunities in the matter of public employment, has been conferred exclusively on the President, which power cannot be exercised by the T.T.D, that the State Government rules, which are made applicable to the T.T.D., would neither bring within its fold the Presidential Order nor would it make employees of the T.T.D, employees of the State Government, to whom alone, the Presidential Order would apply and, in any event, the Board of Trustees of the T.T.D. have not adopted the Presidential Order. Learned Counsel would further submit that, but for the *non-obstante* Clause, in Clause 10 of Article 371-D, local area reservation would require compliance with Part – III of the Constitution of India, and since posts in T.T.D., do not fall within the ambit of either the Presidential Order or Article 371-D of the Constitution of India, providing local area reservation to posts in the T.T.D would fall foul of the fundamental rights guaranteed in Part III of the Constitution of India. Learned Counsel would rely on in "**V. Jagannadha Rao and others v. State of A.P. and others"** in this regard.

PRESCRIPTION OF PRIOR RESIDENCE AS A REQUIREMENT FOR APPOINTMENT TO POSTS: ARTICLES 16(3) READ WITH ARTICLE 35 OF THE CONSTITUTION

When one speaks of “public employment”, immediately Article 16 comes into focus. In view of the mandate of Article 16, but for Clause (10) of Article 371-D, it would not have been possible to consider the question of employment within the narrower units of cadre, created by the State Government, in exercise of powers conferred upon it under para 3(1) of the Presidential Order. (**Govt. of A.P. Vs. Mohd.Ghouse Mohinuddin**)

Article 16 of the Constitution of India, reads as under:

“16. Equality of opportunity in matters of public employment- (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen, shall on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law, prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens, which in the opinion of the State, is not adequately represented in the services under the State.

(4A) Nothing in this article shall prevent the state from making any provision for reservation in matters of promotion of any class or classes of posts in the services under the State in favour of Scheduled Castes and Scheduled Tribes which, in the opinion of the State are not adequately represented in the services under the State.

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious of denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.”

While Clause (2) of Article 16 prohibits discrimination, in employment or office under the State, on the ground of residence, Clause (3) enables Parliament to make a law prescribing any requirement as to residence within the State, prior to such employment or appointment, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority.

The power under Clause (3) of Article 16, prescribing requirement of residence for appointment, has been conferred only on Parliament, as is clear from **Article 35 of the Constitution of India which reads thus**:

Legislation to give effect to the provisions of this Part:- Notwithstanding anything in this Constitution.

a. Parliament shall have, and the Legislature of a State shall not have, power to make laws.

i. With respect to any of the matters which under clause (3) of Article 16, clause (3) of Article 32, Article 33 and Article 34 maybe provided for by law made by Parliament; and

ii. for prescribing punishment for those acts which are declared to be offences under this Part; and Parliament shall, as soon as may be after the commencement of this Constitution, make laws for prescribing punishment for the acts referred to in sub-clauses (ii);

b. any law in force immediately before the commencement of this Constitution in the Territory of India with respect to any of the matters referred to in sub-clause (i) of clause (a) or providing for punishment for any act referred to in sub-clause (ii) of that clause shall, subject to the terms thereof and to any adaptations and modifications that may be made therein under Article 372, continue in force till altered or repealed or amended by Parliament.

The first clause of Article 16 emphasizes that there shall be equality of opportunity for all citizens of India in matters of employment or appointment to any office under the State. The word ‘State’ here is to be understood in the extended sense given to it by the definition of that word in Article 12. By the first clause of Article 16, equality of opportunity in employment or appointment to an office is guaranteed. The second clause then specifies a prohibition against discrimination only on the grounds of religion, race, sex, descent, place of birth, residence or any of them. The intention here is to make every office or employment open and available to every citizen, and, inter alia, to make offices or employment in one part of India open to citizens in all other parts of India. Realizing, however, that sometimes local sentiments may have to be respected or sometimes an inroad from more advanced States into less developed States may have to be prevented, and a residential qualification may, therefore, have to be prescribed, the exception in Clause (3) was made. The clause enables Parliament to make a law in a special case, prescribing any requirement as to residence within a State prior to appointment, as a condition for employment in the State. Under Article 35(a), this power conferred upon Parliament is denied to the Legislatures of the States, notwithstanding anything in the Constitution. The legislative power to prescribe residential qualification, for

employment, is thus exclusively conferred on Parliament, which alone can make a law prescribing requirement as to prior residence within the State, for employment or appointment to an office in the State. Even so, clause (3) of Article 16 speaks of residence within the State. The claim that Parliament can make a provision regarding residence in any particular part of a State would render the general prohibition lose all its meaning. The words 'any requirement' cannot be read to warrant something which could have been said more specifically. These words bear upon the kind of residence or its duration rather than its location within the State. Article 16(3), as it stands, speaks of the whole State as the venue for residential qualification and not residence in Districts, Taluqas, cities, towns or villages. The fact that clause (3) of Article 16 is an exception, and came as an amendment, must dictate a narrow construction, upon the exception, being placed. The words 'any law' and 'any requirement' in Article 16(3) are controlled by the words "residence within the State" which words mean what they say, neither more nor less. It follows, therefore, that prescription of residence, in a part of the state, for appointment to an office under the Govt. or local or other authority would be ultra vires Article 16 of the Constitution. (**A.V.S.Narasimha Rao Vs. State of A.P.**) Even otherwise, Under Article 16(3) only a law made by the Parliament can impose such a restriction or requirement, as the case may be. Admittedly, Parliament has not made any such law. (**Union of India Vs. Sanjay Pant**)

While interpreting paragraph-5 of the Andhra Pradesh Educational Institutions (Regulation of Admission) Order, 1974, (an order of the President under Article 371-D of the Constitution of India), a Full Bench of this Court in **B.Sudhakar** (8 supra)**,** held that a single seat, in super specialty Medical courses, is required to be reserved in favour of local candidates. While holding that the fortuitous circumstance, of a seat in any super specialty being created in any local area, would not by itself invalidate the Presidential Order, the Full Bench held that as and when it was proposed to introduce a single seat in any super-specialty course, in any local area in a non-state-wide University or educational institution subject to the control of the State Government, steps should be taken to send proposals for consideration of the President for inclusion of the course in the schedule to the Presidential Order to enable the said course to be treated as a state-wide course available to all candidates in the State and not merely to candidates from a particular local area.

Though the judgment of the Full Bench is under the Admission Order, and not the Public employment and recruitment order, it is to be noticed that the direction, of the Full Bench, to the State Government was to send proposals for consideration of the President since it is the President alone who could make necessary amendments to the Presidential Order as neither the State legislature nor the State Government, had the power to do so.

Since both the State legislature and the State Government are denuded of the power to prescribe residence as a pre-qualification for appointment and such power is conferred only on Parliament under Article 16(3) read with Article 35 (a)(i), or the President under Article 371-D of the Constitution of India, the rules applicable to Government servants which are made applicable, under the 1983 TTD Rules and the 1989 TTD Rules, to employees of the TTD also, would not include the Presidential Order nor could it have been made applicable, by implication, as any such application would be in violation of Article 16(1) of the Constitution of India.

Even under Article 16(3), the power of Parliament is to prescribe conditions of residence for the entire State and not to any particular part thereof. As the relief sought for by the petitioner in this writ petition is to provide local area reservation to employees of the TTD, in effect, would amount to providing reservation in a part of the State, which even Parliament is not empowered to do, **(A.V.S.Narasimha Rao** 18 supra)**,** it cannot be held that the Presidential Order, by necessary implication, has been made applicable to posts in the T.T.D.

Proviso to Rule 9(1) of the 1989 Rules, while making rules, relating to the University and the Government, applicable to teaching staff of Educational Institutions of the T.T.D., in respect of qualification, age, method of recruitment, pay and allowances, vacation, leave salary, traveling allowance and age of recruitment, does not make prior requirement of residence, as prescribed in the Presidential Order, which are applicable to posts in the government, applicable to posts in the T.T.D.

In **CH.RAJI REDDY AND OTHERS v APSRTC AND ANOTHER**, a declaration was sought that the action of the A.P. State Road Transport Corporation, in not following the Presidential order or considering the rule of reservation therein as between locals and non-locals was illegal and arbitrary, and this court held thus:

"……Article 16 disables any legislation or executive exercise of power, which has the effect

of disabling equal opportunity to all citizens in matters relating to employment or appointment to any office under the State, *inter alia* on grounds only of place of birth or residence. Therefore, any State action be it by a legislative instrument, a regulation or an executive instrument, which denies any citizen an equal opportunity for access to public employment on the ground only of place of birth or residence, would be invalid, qua the provisions of Article 16(2) of the Constitution of India. Article 16(3) however, enacts an exception to the limitations upon legislative and executive power under Article 16(2) of the Constitution of India. Article 16(3) enables legislation by Parliament prescribing in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment. On a true and fair construction, Article 16(3) of the Constitution enables a federal legislation prescribing a residence qualification in a State, as requirement for appointment or employment to a public office in that State. Even the federal legislation enacted under the presents of Article 16(3) of the Constitution of India is confined to enabling but a *residence* qualification in a State as a whole. Thus, the Parliament could make a law prescribing a residence qualification in a State as a prior requirement for a public office within that State. No legislation is permissible even by the Parliament making the requirement of 'residence' in a part of the State for employment or appointment to a public office in that State.

This Constitutional position is no longer *res integra*. The validity of the Public Employment (Requirement as to Residence) Act, 1957 (for short 'the 1957 Act') was considered in *A.V.S.N. Rao v. State of A.P.* (AIR 1970 SC 422)……..

In the light of the law declared *supra,* it is clear that neither the 1st respondent-Corporation nor the State of Andhra Pradesh has competence to prescribe a qualification of 'residence' in a part of the State as a condition precedent for appointment to a public office in the State……"

To summarize the conclusions

(1) The primary purpose of incorporating Article 371-D was (i) to promote accelerated development of the backward areas of the State of Andhra Pradesh so as to secure the balanced development of the State as a whole and (ii) to provide equitable opportunities to different areas of the State in the matter of education, employment and career in public services.

(2) Overriding effect has been given to Article 371-D and to the provisions of the Presidential Order not only against exercise of majoritarian political and executive choices of the State but also against other provisions of the Constitution of India (Article 371-D (10) read with para-11 of the Presidential Order).

(3) The provisions of Article 371-D and the Presidential Order are insulated from any

attack based on any provision of the Constitution of India or any other law for the time being in force, and are not open to challenge on the ground of violation of Articles 14 and 16 of the Constitution of India.

(4) Since the power to make special provision with respect to the State of Andhra Pradesh, under Article 371-D of Constitution of India, has been conferred exclusively on the President, that too only to certain categories of posts, both the State legislature and the State Government are denuded of the power to make any law or frame any rule contrary to the provisions of Article 371-D as also to extend the provisions of the Presidential Order to areas other than those specifically provided for under Article 371-D of the Constitution of India.

(5) The expressions “Posts in civil services under the State”, “Class or Classes of civil posts” and “Cadre under any other local authority”, as used in Article 371-D, are not to be interpreted in their widest amplitude and are to be strictly attuned to the context and purpose of the provisions of Article 371-D of the Constitution of India. (**L.V.A.Dikshitulu** –7 supra)

(6) Since Article 371-D is a special provision, which marks a departure from the general scheme of the Constitution, the area of departure cannot be extended beyond what is un-mistakably and specially delineated by the words employed therein and since Article 371-D is a special provision applicable to posts in the civil service, to civil posts under the Government of Andhra Pradesh and to posts under a local authority within the State of Andhra Pradesh, the provisions of the Presidential Order cannot be extended to posts in the TTD. (**L.V.A.Dikshitulu** 7 supra)

(7) The Presidential Order cannot, by necessary implication, be extended to posts in the T.T.D. since they are not posts in the civil services of the State, or civil posts or posts under a local authority.

(8) In areas where Article 371-D has no application, any requirement of prior residence would fall foul of Article 16(2) of the Constitution of India except where Parliament has, by law, made under Article 16(3) of the Constitution of India, prescribed requirement of residence within a State prior to appointment, as a requirement for appointment to an office under the Government or any local or other authority within the State.

(9) Power to make such a law prescribing residence as a requirement has been

conferred only on Parliament under Article 16(3) and, in view of Article 16(3) read with Article 35(a)(i) of the Constitution of India, the legislature of a State does not have the power to make such a law.

(10) The power of Parliament to make a law, prescribing residence as a requirement, is for the State as a whole and not for any part thereof. Since Article 371-D and the Presidential Order would not apply to posts in the T.T.D, any provision of local area reservation for appointment to posts in the T.T.D. would amount to providing reservation in a part of the State which even Parliament is not empowered to do under Article 16(3) of the Constitution of India.

(11) It cannot therefore be held that the Presidential Order, by necessary implication, has been made applicable to posts in the T.T.D.

(12) Neither the 1983 T.T.D. rules nor the 1989 T.T.D. rules, (which make rules applicable to Government employees applicable to posts in the T.T.D.), can be read to include application of the Presidential Order or for provision of local area reservation to posts in the T.T.D.

Conclusion:

Since Article 371-D and the Presidential Order neither expressly, nor by necessary implication, apply to posts in the T.T.D. any provision of local area reservation to posts in the T.T.D. would be in violation of Article 16(1) of the Constitution of India. It is unnecessary therefore to deal with the other contentions urged on behalf of the respondent T.T.D. Suffice to state, that para 8(v) of the Presidential Order wherein 60% of the posts in the cadre of Civil Assistant Surgeons are to be reserved in favour and allocated among the local candidates is under the State Government and would not apply to T.T.D; that the category of Assistant Professor in Indian Medicine is higher than that of Civil Assistant Surgeon and as such para 8(v) has no application and, in any event, under para 8(v) there is a percentage prescribed and not every post is required to be reserved in favour of a local candidate in a particular zone.

Challenge, to the appointment of the third respondent, as being in violation of the Presidential Order, fails and the writ petition is accordingly dismissed. There shall however be no order as to costs.

-9-2005